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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT P. STORER,

Defendant and Appellant.

A092923

(Sonoma County  
Super. Ct. No. MCR 337436)

Albert P. Storer (appellant) was charged with willful infliction of corporal injury on a cohabitant and assault. Pursuant to plea agreement, appellant pled no contest to the first charge, and the second was dismissed. Appellant was sentenced to four years in state prison. The court suspended execution of sentence and placed appellant on probation for 36 months. One condition of probation was that appellant serve a year in county jail. In addition, appellant was not to consume or possess alcohol and was not to possess weapons. On October 5, 1999, the terms of appellant's probation were modified to permit his release from jail to a residential treatment program, if space became available. However, appellant remained in jail until he was ordered released by the court on April 27, 2000. On June 8, 2000, the court summarily revoked appellant's probation. On June 28, 2000, appellant admitted violating probation. On August 25, 2000, the court ordered probation revoked and further ordered that the four-year term previously imposed and suspended be executed. Appellant was given 481 days of presentence credits.

Appellant advances a single appellate argument, contending that the trial court abused its discretion in revoking his probation and ordering that his state prison sentence be executed. We affirm.

## **I. FACTS**

### ***A. Probation Report for Charged Offenses***

The Sonoma County Probation Department (department) prepared a presentencing report, following appellant's initial plea of no contest. The department indicated that, as of June 19, 1999, appellant had been living with his girlfriend for two months. That day, appellant consumed one-and-a-half pints of vodka. His girlfriend (victim) had been experiencing back pains and went into her room to lie down around 3:30 p.m. Appellant entered the room and was asked to leave. He became angry, grabbed the victim, dragged her into the living room and threw her on the ground. He got on top of her and began slapping her in the face. The victim convinced appellant to stop for a time. After they went on the back deck for a cigarette, the victim went back to her room. Appellant followed her and again grabbed her by the arms and dragged her to the living room. Once again, he threw her on the floor and slapped her in the face and on the head. The department also indicated that appellant assaulted the victim on June 16, 1999. On that occasion, he tore off her clothes and attempted to force his penis into the victim.

The department indicated that appellant had a lengthy criminal history and that many of his offenses had involved the abuse of alcohol. On August 19, 1997, appellant was convicted of misdemeanor battery, when he tipped over a chair in which his female victim was sitting and struck her four times while she lay on the floor. Appellant was placed on probation in connection with that offense. He violated probation on two occasions by drinking and possessing alcohol.

Appellant admitted to the department that his alcohol use had become progressively greater since the death of his father in 1991. He participated in a 30-day treatment program at "Sunset House" near Concord in February 1998. He was attending "AA" meetings. He had no plans for a residential treatment program but would agree to

participate in one, preferably no longer than 30 days, if participation were ordered by the court. The department considered appellant a “marginal candidate for probation at best.”

### ***B. Violation of Probation***

During a routine visit to appellant’s home following his release from jail in April 2000, a probation officer found appellant hiding in a closet. The probation officer also found two empty bottles of alcohol and at least one full can of beer in the home. In addition, the officer found a large billy club in a nightstand in appellant’s bedroom. Appellant had no explanation for the presence of beer in the house or his hiding in the closet, although he speculated that the alcohol might have belonged to his girlfriend, with whom he was again living. He later claimed that the billy club was “an antique family heirloom.” Appellant admitted violating the terms of probation that prohibited him from possessing alcohol and weapons.

### ***C. Probation Report Following Violation of Probation***

In its prehearing report, the department noted that appellant had been screened by “TASC” and found to be inappropriate for treatment. The TASC representative found appellant to be “psychologically inappropriate and dishonest.” In addition, TASC found that appellant was not motivated for treatment at the time of screening.

The department also opined that appellant was not motivated to participate in treatment. The department further noted that appellant repeatedly ignored the conditions of his probation relating to alcohol. Accordingly, the department recommended that probation be terminated and that appellant’s original sentence be executed.

### ***D. Probation Revocation Hearing***

At the outset of the revocation hearing, appellant’s counsel asserted that appellant wanted treatment and was willing to remain in custody until bed space became available. Dr. Mark Paradis then addressed the court on appellant’s behalf. Dr. Paradis stated that appellant had suffered a serious head injury in the late 1970’s. He opined that some of appellant’s “personality characteristics” were related to that head trauma.

The court stated that it was not convinced that appellant was amenable to any type of treatment. The court noted appellant’s “pattern of behavior,” finding that appellant

had been a “nuisance to society” for some period of time but that he had been a “danger to society for the last 14 years.” The court observed that appellant had never shown any inclination that he wanted to improve himself and overcome his shortcomings. The court then called attention to appellant’s “assaultive behavior” with women. The court concluded that it would not expose others to appellant’s “anger and potential assaultive behavior.” The court terminated and revoked probation and ordered appellant committed to state prison in conformity with his original sentence.

## **II. ANALYSIS**

Trial courts enjoy “great discretion” in determining whether or not to revoke probation. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 445 (*Rodriguez*).) A reviewing court must not disturb a trial court’s decision regarding revocation of probation, absent a manifest miscarriage of justice. (*People v. Angus* (1980) 114 Cal.App.3d 973, 988 (*Angus*).)

Appellant argues that the trial court abused its discretion when it revoked his probation based merely on the possession of a billy club, which he contends was a “memento from his grandfather,” and the possession of bottles of alcohol, which he contends was no more than evidence of his “alcoholism.” He contends that he was denied the opportunity to participate in a residential treatment program, as contemplated by the October 5, 1999, amendment of the terms of his probation. He points out that he had not committed any new acts of violence. Thus, “nothing had changed between the granting and revoking of probation.” Accordingly, he reasons that there was no reasonable basis for the court’s choice to commit him to prison, rather than to permit him to enter a residential treatment program. Appellant’s arguments lack merit from several perspectives.

First, appellant fails to note the serious nature of the offense for which he was placed on probation. As reflected above, appellant committed at least two, and perhaps three, acts of violence on his girlfriend. Further, those violent acts were almost certainly tied to appellant’s abuse of alcohol. Thus, the term of probation that barred appellant from possessing or using alcohol was reasonably calculated to prevent appellant from

engaging in future acts of violence while under the influence. Likewise, the ban on appellant's possession of weapons was designed to minimize the risk that appellant would cause serious harm to others. Here, in possessing alcohol and likely consuming alcohol, as evidenced by the empty bottles, and in possessing a weapon, appellant engaged in behavior that might well have led to commission of additional violent acts. Thus, appellant's probation violations were more than mere technical violations. Instead, they represented the real threat of future violent conduct. That threat was all the more real in light of the fact that appellant had moved back in with the girlfriend he had assaulted while under the influence of alcohol less than a year before. Thus, the trial court's choice to revoke probation, based on appellant's violation of two key conditions of his probation, does not constitute an abuse of discretion.

In tacit acknowledgment of the fact that his alcoholism has led to violent behavior, appellant asserts that it was incumbent upon the court to give him the opportunity to come to grips with that problem through a residential treatment program. He further contends that it was inappropriate for the court to deny him that opportunity, based on his lack of motivation to participate fully in such a program. In support of that contention, appellant cites *People v. Leonard* (1972) 25 Cal.App.3d 1131, 1134-1136 (*Leonard*), in which the Court of Appeal held that a trial court lacks authority to deny commitment of an addict to a rehabilitation facility under Welfare and Institutions Code section 3051 (section 3051), based solely on the fact that the addict lacks motivation to benefit from such commitment. *Leonard* is readily distinguishable from the case before us. Section 3051 requires that any narcotics addict be committed to a rehabilitation facility, unless the court finds that the addict's "pattern of criminality" makes him or her unfit for such commitment. *Leonard* merely indicates that, in section 3051 civil commitment proceedings, the addict's lack of motivation is not a proper basis upon which to deny commitment. (*Leonard, supra*, 25 Cal.App.3d at p. 1136.) Here, of course, we are dealing with an alcoholic's commitment to a treatment facility as a condition of criminal probation. Appellant cites no authority, and we are aware of no authority, that precludes

a trial court's consideration of a defendant's motivation to participate in, and benefit from, such treatment when assessing his or her suitability for probation.

In sum, placing a criminal on probation constitutes "an act of clemency and grace." (*Rodriguez, supra*, 51 Cal.3d at p. 445.) By implication, reinstituting probation, following violation of the terms of that probation, is also an act of clemency and grace. Here, appellant's violation of two key terms of his probation constituted ample grounds for revocation of probation and commitment to state prison. We see no abuse of discretion. (*Angus, supra*, 114 Cal.App.3d at pp. 987-988.)

### **III. DISPOSITION**

The judgment is affirmed.

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McGuiness, P.J.

We concur:

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Corrigan, J.

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Parrilli, J.